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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,311	01/23/2004	Holger Lubatschowski	3968.106	8168
30448 AKERMAN SE	7590 01/23/200 ENTERFITT	EXAMINER		
P.O. BOX 3188		FARAH, AHMED M		
WEST PALM BEACH, FL 33402-3188			ART UNIT	PAPER NUMBER
		3769		
			MAIL DATE	DELIVERY MODE
			01/23/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary		Application No.	Ap	Applicant(s)				
		10/764,311	LU	LUBATSCHOWSKI ET AL.				
		Examiner	Ar	t Unit				
		Ahmed M. Farah		' 69				
The MAILING DATE of Period for Reply	of this communication app	pears on the cover sh	eet with the corre	espondence ad	dress			
A SHORTENED STATUTO WHICHEVER IS LONGER, - Extensions of time may be available after SIX (6) MONTHS from the mail - If NO period for reply is specified abo - Failure to reply within the set or exte Any reply received by the Office late earned patent term adjustment. See	FROM THE MAILING D. under the provisions of 37 CFR 1.1 ing date of this communication. ove, the maximum statutory period anded period for reply will, by statute than three months after the mailing	ATE OF THIS COMI 36(a). In no event, however, will apply and will expire SIX , cause the application to be	MUNICATION. may a reply be timely fi (6) MONTHS from the n come ABANDONED (38)	iled mailing date of this co 5 U.S.C. § 133).				
Status								
1) Responsive to comm	unication(s) filed on Sen	20 '08						
2a) This action is FINAL .		action is non-final.						
' _	/—		I matters prosec	cution as to the	merits is			
· - · · ·	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
Disposition of Claims	•	, ,	,					
<u> </u>	d 40-52 is/are pending in	the application						
	Claim(s) 30,32-38 and 40-52 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration.							
5) Claim(s) is/are		WIT ITOTIT CONSIDERATIO	/II.					
6) Claim(s) is/are								
· <u> </u>								
7)	-	striction and/or alcati	on requirement					
0) Claim(s) <u>50,52-50 am</u>	<u>a 40-52</u> are subject to res	striction and/or electi	on requirement.					
Application Papers								
9)☐ The specification is ob	jected to by the Examine	er.						
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.								
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).								
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).								
11)⊠ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.								
Priority under 35 U.S.C. § 119								
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 								
Attachment(s) 1) Notice of References Cited (PTC 2) Notice of Draftsperson's Patent I 3) Information Disclosure Statemen Paper No(s)/Mail Date	Drawing Review (PTO-948)	Pap 5) D Not	erview Summary (PT0 per No(s)/Mail Date ice of Informal Paten er:					

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim30, 32-38 and 40-42, drawn to ophthalmic surgical methods using laser pulses, classified in class 606, subclass 4.
- II. Claims 43-52, drawn to controller for controlling a surgical laser system classified in class 606, subclass 10.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the controller can be used for controlling another and materially different surgical laser system adapted for dermatological treatment of tissue, such as tissue welding, hair removal, treatment of acne, etc.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

(a) the inventions have acquired a separate status in the art in view of their different classification;

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(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

- (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);
- (d) the prior art applicable to one invention would not likely be applicable to another invention;
- (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C.101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to the office of the applicant's representative on January 20, 2009 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johnson Henry can be reached on (571) 272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/ Primary Examiner, Art Unit 3769

January 20, 2009.